

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-387

July 19, 2000

PUBLIC UTILITIES COMMISSION  
Maine Telecommunications Education  
Access Fund (Chapter 285)

ORDER ADOPTING  
RULE AND STATEMENT  
OF FACTUAL AND  
POLICY BASIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

In this Order we adopt a rule for implementing the Telecommunications Education Access Fund (Fund or TEAF) established in 35-A M.R.S.A. § 7104-B. The Rule describes a process for assessing contributions to the Fund, how the funds will be used, and how qualified schools and libraries will apply for discounts.

**II. BACKGROUND**

In June 1999, the Governor signed into law legislation (effective September 18, 1999) directing the Commission to establish a Telecommunications Education Access Fund. All carriers offering telecommunications services in the State will contribute to the Fund, in an amount not to exceed 0.5% of retail charges, as determined by the Commission. The Fund may be used to provide discounts for telecommunications services, Internet access, internal connections, computers, and training. The assessment for the Fund can begin no earlier than July 1, 2001. These funds will replace the funding currently available through Bell Atlantic for connecting schools and libraries to the Internet, which will terminate in June 2001. See *Public Utilities Commission, NYNEX School and Library Project*, Docket No. 96-900 (July 13, 1999).

On February 9, 2000, we opened an inquiry to gather information from interested persons on how the Commission should implement the provisions of 35-A M.R.S.A. § 7104-B. The comments were used in developing the Proposed Rule issued on May 16, 2000. The Secretary of State published notice of the Proposed Rule on May 24, 2000. A hearing on the proposed rule was held on June 15, 2000. Jean Gulliver testified on behalf of the State Board of Education and the Maine Department of Education (Education), and Elizabeth Moran testified on behalf of the Maine State Library, Maine Library Commission, Maine Library Association, Maine Association of School Libraries, Maine Library Trustees Association and Friends of Maine Libraries (Libraries). The Telephone Association of Maine (TAM), Bell Atlantic-Maine,<sup>1</sup> Verizon Wireless, MaineCom and PaineWebber, Inc. filed written comments. We discuss these

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<sup>1</sup> The Commission was recently notified that Bell Atlantic-Maine will now be referred to as Verizon-Maine.

comment below and any changes we have made to the Proposed Rule in response to those comments.

## II. DISCUSSION OF RULE AND COMMENTS

### A. Section 1: Definitions

The definitions in this section generally follow those required in 35-A M.R.S.A. § 7104(1). Education asks whether alternative education programs were included in the definition of qualified school. Under Maine law, a school administrative unit may establish an alternative to the regular course of study to meet the needs of at risk students. 20 M.R.S.A. § 4729. Because these programs operate as part of the elementary or secondary school program we believe they meet the definition of public school. The Rule has been changed to make this clear.

### B. Section 2: Assessment

#### 1. Section 2(A) Contribution

Section 2(A) and (B) provide that the assessment will be *up to* 0.5% of retail charges for telecommunications services and that the Commission will set the precise amount based on the recommendation of the Advisory Board. Libraries and Education asks that the amount be established at .5%. Verizon Wireless and TAM support the Proposed Rule language that the assessment be based on need rather than simply using the maximum amount allowed by 35-A M.R.S.A. § 7104-B(3)(A). We believe the amount should be set each year based on needed services, their anticipated costs and the funds available from the Federal E-Rate. Although we may decide to assess .5%, the “up to” language gives the Commission the flexibility to weigh the needs of schools and libraries and take into consideration other universal service charges that may be required under 35-A M.R.S.A. § 7104-A.

#### 2. Section 2(C) Collection Process

The Proposed Rule requires carriers to collect up to .5% of a subscriber’s monthly retail charges for the Fund. Bell Atlantic argues that carriers should have the flexibility to charge a non-usage sensitive surcharge. It argues that the benefit will largely be distributed to citizens per capita, not as a factor of usage, nor does the amount of a customer’s in-State usage necessarily reflect the customer’s ability to pay. We disagree that every carrier should have the option to collect the amount either as a percentage or as a flat charge. The Fund and its purposes will be easier to explain to customers if all carriers identify and charge for it in the same manner. At least initially, we believe the charge as percentage of the bill is the best way to meet this objective. A non-usage sensitive charge would also require a projection of sales and a true-up mechanism. Collecting it monthly avoids these administrative steps.

3. Section 2(D): Identification of Amount on Bill

This section of the Proposed Rule required that the amount be identified on the customer's bill as "Contribution for Telecommunications Education Access Fund for Maine's Schools and Libraries." Bell Atlantic asks that the title be shortened to fewer than 25 characters due to constraints of its billing program. It suggests "School and Library Fund." TAM suggests the wording be changed to "State Assessment for Maine Telecommunications Education Access Fund," as assessment is more accurate than contribution. The Libraries suggest the use of "State Universal Service Fund" or "Telecommunication Education Access." Education suggests "Telecommunications Education Access Fund." 35-A M.R.S.A. § 7104-B(3)(D) requires "explicit identification on customer bills of any charge imposed." We desire a description that informs ratepayers as to use of the contribution. The phrase "Schools and Library Fund" accurately reflects how the Funds will be used and contains fewer characters. We have changed the Rule to reflect this change.

4. Section 2(E) Remittance of Funds Collected

This section explains that the Commission will contract with an independent fiscal agent to serve as administrator of the Fund. PaineWebber asked for clarification of the duties of the fiscal agent. We do not believe the precise duties need to be spelled out in the rule. Generally, the independent fiscal agent will be responsible for ensuring that the carriers transmit the proper amount to the agent and the agent in turn will be responsible for distributing the funding to eligible schools or libraries or their vendors. The precise role will be defined in a Request for Proposal when the Commission seeks a contractor.

C. Section 3: Use of Funds

This section lists the five areas described in the statute as eligible for funding. At a minimum, schools and libraries will be eligible for discounts that will allow the same level of access available to each school and library as existed on June 30, 2001, under the current Maine School & Library Network. This section also reiterates the statutory requirement that 25% of funding be allocated to "innovative and technologically advanced projects."

MaineCom asks if certain private telecommunication facilities would meet the definition of telecommunications services or inside wiring. BA suggests that the definition of eligible telecommunications services be the same one developed by the Universal Services Administration (USAC) in implementing the E-Rate program. We intend that the same services that are eligible for Federal E-Rate will be eligible for State support in the telecommunications services, Internet and internal connections categories. A summary of the FCC's list of eligible services in these categories appears at [www.sl.universalservice.org/reference/eligible.asp](http://www.sl.universalservice.org/reference/eligible.asp).

Bell Atlantic observes that funding for non-telecommunication applications (e.g., training, computers, internal wiring) should be carefully scrutinized since they have no logical nexus to the telecommunications services of ratepayers who pay for the fund. BA recommends that the rule establish an overall percentage cap in the 5-10% range on applications other than telecommunications services. We do not believe it necessary to include a cap in the Rule. Because the rule gives priority to ensuring that every site has Internet access at its present level, we fully expect that the vast majority of the discounts will go towards Internet service and the telecommunications service needed to provide that connection to the Internet. We also expect that the majority of the funding for each technologically advanced project will involve connection to the Internet. We leave to the Board to recommend what additional spending may be necessary for computers, training and internal connections, after fully considering need and other available sources of funding.

Education and Libraries both ask whether the Rule should describe our earlier decision that any funds remaining in the escrow account established by Bell Atlantic will be used to benefit schools and libraries, unless the Legislature directs otherwise. We do not believe it necessary to include a description of our intent in the Rule. The purpose of the Rule is to establish a framework for how the new funding will be collected and distributed. Our order concerning unexpended funds stands.

D. Section 4: Eligibility for State Discount

This section requires schools and libraries to demonstrate that they have applied for Federal E-Rate discounts, for those services that are eligible for E-Rate discounts, before receiving State discounts. BA suggests a process that would require a funding commitment letter from Federal USAC before receiving a state discount. We do not believe this is necessary. The State discount may be available even if Federal funding is not available. We further discuss the timing of the application process in Section F below.

E. Section 5: Advisory Board

The Proposed Rule describes an Advisory Board with 10 members. Education and Libraries suggest that the "Maine State Librarian or his designee" or "Commissioner of Education or his designee" be listed as members. The proposed membership list describes the *interest* to be represented and the *entity* that will designate the member. The Proposed Rule states that the Maine State Librarian shall designate a representative of qualifying public libraries; this could include the Maine State Librarian designating himself. The same holds true for schools. We prefer to continue to list the interest and the designator, with the understanding that the designator can designate himself. The Libraries also suggested adding: "The Commission may recommend other members it feels are vital to the interests of the project." We add similar language to allow flexibility if it becomes apparent that additional viewpoints should be represented on the Board.

We also clarify Section 5(C) with regard to voting by the Board. We will determine the voting status of any new member at the time of designation. We intend that the Board will use the same procedures as those of our current Advisory Board. The voting members of the Board are the 5 members representing "public" institutions. Voting members do not include entities that have a possible financial interest in the outcome of Board recommendations. However, the Board chair generally assesses the position of all Board members before issuing a recommendation and offers dissenting members the opportunity to submit their own comments. This process has worked well at getting all pertinent information to our attention and we note the vast majority of recommendations have been endorsed by the entire Board.

F. Additional Comments

Bell Atlantic suggested that the timing of various decision points in the Proposed Rule should be reconsidered. Under the Proposed Rule, the following events will occur:

1. Schools and Libraries (or Consortia of Schools and Libraries) submit Federal 470 Applications – July - Nov.
2. Schools, Libraries, Consortia submit Federal Form 471 – Nov - Jan.
3. Advisory Board recommends to the Commission the services to be funded, the funding levels and the amount to be assessed by carriers, based in part on a review of copies of the 471 applications submitted by schools and libraries - March 15.
4. Commission determines services to be funded and size of assessment based in part on a projection of in-state revenues (the previous year's in-state revenues are generally available to the Commission by April 15) - May 1.
5. Last date for submitting State application for discounts – June 30.
6. Start assessment on bills – July 1.

Bell Atlantic suggests that all the dates be shifted forward so that the actual amount of Federal E-Rate funding is known prior to decisions on the State fund. Currently most sites are informed about federal funding between May and July. Under BA's proposal, the above dates would shift 3 - 5 months, with a Commission decision on the funding level made in August and collections beginning in October. We reject this suggestion because we believe it is important to begin both the collection process and the awarding of State funds to eligible sites, as early as possible. It is not necessary to know the precise level of E-Rate funding awarded in order to implement the State awards. We are willing to operate the first year of the program using projections. If this proves unworkable, we can waive certain portions of the Rule or revise the Rule. We also can increase the assessment (up to .5%) or use funds remaining from the current

MSLN, if funding appears to be less than the projected need. Obviously, the first year of the program will be a test of many of these assumptions.

The schedule in the Proposed Rule presumes that a majority of sites will apply for (and receive) Federal E-Rate for the telecommunications services and Internet under a consortia application submitted by the State. The amount the State fund will need to contribute to fully fund these services will be known when the Federal 471s are submitted. This will be the starting point for the Advisory Board's determination of the assessment level and the funds are available for other services, in addition to the 25% set aside for technologically advanced projects. Therefore, we decline to revise the dates in the Proposed Rule. We will remove from Section 4(A) the requirement that applications for discounts be filed by June 30. As stated in 4(C), an application process will be established by the Commission. It is likely that we will require eligible sites to file their Form 471s with the Commission (or its designee) at the time the form is filed with the USAC (likely January or February). If the Commission decides that other non-E-Rate eligible services will be funded through the Fund (e.g., computers, training, inside wiring), the Commission will set the date and application process appropriate for that offering. This may or may not be simultaneous with the Federal E-Rate application. We expect the Board to make recommendations to us on these process questions.

Accordingly, we

#### **O R D E R**

1. That the attached Chapter 285, Maine Telecommunications Education Access Fund, is hereby adopted;
2. That the Administrative Director shall send copies of this Order and attached rule to:
  - a. All telecommunications carriers, including all wireless carriers, operating in the State of Maine;
  - b. Organizations representing the interests of Maine's schools and libraries, as identified in the School and Library Network Advisory Board;
  - c. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
  - d. All persons filing comments in this docket and Docket No. 2000-85;
  - e. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

f. Executive Director of the Legislative Council, State House Station  
115, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 19th day of July, 2000.

BY ORDER OF THE COMMISSION

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Raymond J. Robichaud  
Acting Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond